

AMENDED IN ASSEMBLY APRIL 21, 2003

AMENDED IN ASSEMBLY APRIL 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 634

**Introduced by Assembly Member Members Steinberg and
Simitian**

(Principal coauthor: Assembly Member Montanez)

**(Coauthors: Assembly Members Bermudez, Calderon, Chu, Diaz,
Jerome Horton, Laird, Lieber, Lowenthal, Pavley, Reyes, and
Yee)**

(Coauthors: Senators Bowen, Romero, and Speier)

February 19, 2003

An act to amend Section 2023 of, and to add Section 2031.1 to, the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 634, as amended, Steinberg. Elder abuse actions: confidentiality.

The Elder Abuse and Dependent Adult Civil Protection Act, among other things, authorizes civil actions arising from abuse of elderly or dependent adults.

The Civil Discovery Act of 1986 establishes provisions relating to discovery in civil actions and special proceedings of a civil nature. The Civil Discovery Act of 1986 establishes a list of acts that constitute misuses of the discovery process.

This bill would expand that list to include destruction of relevant evidence in any civil action alleging a violation of the Elder Abuse and

Dependent Adult Civil Protection Act. This bill would also provide that it is the policy of the state that in any case alleging a violation of the Elder Abuse and Dependent Adult Civil Protection Act, confidentiality agreements are disfavored ~~and should be approved by the court only when there is a genuine trade secret or privilege to protect~~, and would require a showing, as specified, before a confidentiality agreement in this type of proceeding may be recognized or ~~approved~~ *enforced* by the court.

The bill would also state that certain provisions in the bill are declaratory of existing law.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2023 of the Code of Civil Procedure is
2 amended to read:
3 2023. (a) Misuses of the discovery process include, but are
4 not limited to, the following:
5 (1) Persisting, over objection and without substantial
6 justification, in an attempt to obtain information or materials that
7 are outside the scope of permissible discovery.
8 (2) Using a discovery method in a manner that does not comply
9 with its specified procedures.
10 (3) Employing a discovery method in a manner or to an extent
11 that causes unwarranted annoyance, embarrassment, or
12 oppression, or undue burden and expense.
13 (4) Failing to respond or to submit to an authorized method of
14 discovery.
15 (5) Making, without substantial justification, an unmeritorious
16 objection to discovery.
17 (6) Making an evasive response to discovery.
18 (7) Disobeying a court order to provide discovery.
19 (8) Making or opposing, unsuccessfully and without
20 substantial justification, a motion to compel or to limit discovery.
21 (9) Failing to confer in person, by telephone, or by letter with
22 an opposing party or attorney in a reasonable and good faith
23 attempt to resolve informally any dispute concerning discovery, if
24 the section governing a particular discovery motion requires the
25 filing of a declaration stating facts showing that such an attempt



1 has been made. Notwithstanding the outcome of the particular
2 discovery motion, the court shall impose a monetary sanction
3 ordering that any party or attorney who fails to confer as required
4 pay the reasonable expenses, including attorney's fees, incurred by
5 anyone as a result of that conduct.

6 (10) ~~Destroying relevant~~ *The intentional destruction or*
7 *suppression of* evidence in any civil action alleging a violation of
8 the Elder Abuse and Dependent Adult Civil Protection Act
9 (Chapter 11 (commencing with Section 15600) of Part 3 of
10 Division 9 of the Welfare and Institutions Code).

11 (b) To the extent authorized by the section governing any
12 particular discovery method or any other provision of this article,
13 the court, after notice to any affected party, person, or attorney, and
14 after opportunity for hearing, may impose the following sanctions
15 against anyone engaging in conduct that is a misuse of the
16 discovery process.

17 (1) The court may impose a monetary sanction ordering that
18 one engaging in the misuse of the discovery process, or any
19 attorney advising that conduct, or both pay the reasonable
20 expenses, including attorney's fees, incurred by anyone as a result
21 of that conduct. The court may also impose this sanction on one
22 unsuccessfully asserting that another has engaged in the misuse of
23 the discovery process, or on any attorney who advised that
24 assertion, or on both. If a monetary sanction is authorized by any
25 provision of this article, the court shall impose that sanction unless
26 it finds that the one subject to the sanction acted with substantial
27 justification or that other circumstances make the imposition of the
28 sanction unjust.

29 (2) The court may impose an issue sanction ordering that
30 designated facts shall be taken as established in the action in
31 accordance with the claim of the party adversely affected by the
32 misuse of the discovery process. The court may also impose an
33 issue sanction by an order prohibiting any party engaging in the
34 misuse of the discovery process from supporting or opposing
35 designated claims or defenses.

36 (3) The court may impose an evidence sanction by an order
37 prohibiting any party engaging in the misuse of the discovery
38 process from introducing designated matters in evidence.

39 (4) The court may impose a terminating sanction by one of the
40 following orders:

1 (A) An order striking out the pleadings or parts of the pleadings
2 of any party engaging in the misuse of the discovery process.

3 (B) An order staying further proceedings by that party until an
4 order for discovery is obeyed.

5 (C) An order dismissing the action, or any part of the action, of
6 that party.

7 (D) An order rendering a judgment by default against that
8 party.

9 (5) The court may impose a contempt sanction by an order
10 treating the misuse of the discovery process as a contempt of court.

11 (c) A request for a sanction shall, in the notice of motion,
12 identify every person, party, and attorney against whom the
13 sanction is sought, and specify the type of sanction sought. The
14 notice of motion shall be supported by a memorandum of points
15 and authorities, and accompanied by a declaration setting forth
16 facts supporting the amount of any monetary sanction sought.

17 SEC. 2. Section 2031.1 is added to the Code of Civil
18 Procedure, to read:

19 2031.1. (a) Notwithstanding any other provision of law, it is
20 the policy of the State of California that confidentiality agreements
21 are disfavored in any civil action alleging a violation of the Elder
22 Abuse and Dependent Adult Civil Protection Act (Chapter 11
23 (commencing with Section 15600) of Part 3 of Division 9 of the
24 ~~Welfare and Institutions Code~~), and ~~should be approved by the~~
25 ~~court only when there is a genuine trade secret or privilege to be~~
26 ~~protected.~~ *Welfare and Institutions Code*).

27 (b) A confidentiality agreement described in subdivision (a)
28 may not be recognized or ~~approved~~ *enforced* by the court absent
29 a showing that the information is privileged, or a particularized
30 showing, document by document, of all of the following:

31 (1) Secrecy is in the public interest.

32 (2) The proponent has a cognizable interest in the material,
33 such as a showing that the material contains a trade secret that
34 cannot be adequately protected through redaction, or a showing
35 that the material is otherwise protected by law from disclosure.

36 (3) Disclosure would cause serious harm.

37 (c) Except as expressly provided in this section, nothing in this
38 section is intended to alter, modify, or amend existing law.

1 *SEC. 3. The amendments to paragraph (10) of subdivision (a)*
2 *of Section 2023 of the Code of Civil Procedure made by this bill*
3 *are declaratory of existing law.*

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